Opinion No. 1115

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

TAX DIVISION

TALLEY R. HOLMES, JR. and L. THERESA HOLMES, Petitioner	)	
v.	)	Docket No. 2599
DISTRICT OF COLUMBIA, Respondent	)	

MEMORANDUM ORDER

This case comes before the Court on the motion to dismiss filed by the respondent. The ground for the motion is that the Court lacks jurisdiction to hear this case because the petitioners failed to pay the tax before filing this action.

I

The record before the Court contains only the petition, the answer, and the motion to dismiss, together with the supporting and opposing memoranda. Neither side has filed affidavits or any other materials which would furnish any background information. In ruling on the pending motion, the Court must accept as true all material allegations in the petition. Harrington v. Bush, 180 U.S. App. D.C. 45, 52, 553 F.2d 190, 197 (1977); Pauling v. McElroy, 107 U.S. App. D.C. 372, 373, 278 F.2d 252, 253-254 (1960), cert. denied 364 U.S. 835 (1960).

The facts set forth in the petition are that L. Theresa Holmes owns and Talley R. Holmes, Jr. manages the real property located at 1839 13th St., N.W. in the District of Columbia,

that property being known as the Whitelaw Apartment Hotel. On or about November 15, 1976, the defendant issued the petitioners a notice that certain violations existed on the property which constituted violations of the District of Columbia Housing Regulations and that such conditions should be corrected within 90 days and if not, that respondent might proceed to have the work done and that the cost would be included in the assessment against the property as a tax and constitute a lien against that property. Petitioners made some repairs but not all and after the ninety day period had run, the respondent, purporting to act under D. C. Code 1973, §5-313, proceeded to have the work done at a cost of $17,250. An assessment has now been made in that amount.

Petitioners contend that the statute does not authorize the respondent to make an assessment for the cost of repairs, that if the statute applies it is unconstitutional, that the respondent did not follow the requirements of D. C. Code 1973, §§5-313 and 5-315, that the Housing Code is vague and that the charge of $17,250 is unreasonable. While the motion "admits for the purposes of the motion, all the well pleaded facts * * *, such admission does not, of course, embrace sweeping legal conclusions cast in the form of factual allegations". Pauling v. McElroy, supra, U. S. App. D. C. at 374, F.2d at 254. The latter "factual allegations" fall within this category and are not deemed admitted for the purposes of the motion.

II

The respondent argues that the case should be dismissed since it involves taxes and the tax was not paid prior to the filing of the petition.

Section 5-313 provides that in the event the owner receives reasonable notice of a violation and fails to correct the same, the Commissioner (Mayor) may take necessary action to have the conditions corrected and assess the costs "as a tax against the property" and that the tax is to be carried on the "regular tax rolls" and may be collected "in the same manner as general taxes * * * are collected". The provisions for collecting general taxes are found in Title 47 of the District of Columbia Code.

This Court is satisfied that the assessment becomes, in effect, a tax and is to be thereafter treated as a tax for all purposes, including collection and appeal.[1/] This being the case, the prerequisite to appeal to the court is the payment of the tax, see District of Columbia v. Deronter, 151 U.S. App. D.C. 196, 466 F.2d 367 (1972); George Hyman Construction Co. v. District of Columbia, 315 A.2d 175 (D.C. App. 1974); Perry v. District of Columbia, 314 A.2d 766 (D.C. App. 1974), unless the facts are so exceptional and extraordinary as to merit equitable relief, District of Columbia v. Green, 310 A.2d 848, 852 (D.C. App. 1973).[2/]

1/ Cf. District of Columbia Redevelopment Land Agency v. Eleven Parcels of Land, No. 77-1966 (D.C. Cir. Nov. 9, 1978).

2/ Having concluded that the assessment is a tax, it follows that the Tax Division has exclusive jurisdiction of the case. D. C. Code 1973, §11-1201.

Here the tax was not paid prior to the petition being filed, thus the action must be dismissed unless the petitioners demonstrate that the facts are exceptional and extraordinary and that they are otherwise entitled to equitable relief.

III

The petitioners have not specifically requested injunctive relief, however, they ask the Court to determine the validity of the tax liens before they are required to pay those taxes. The due date for the taxes was November 15, 1978, 3/ and the respondent contends that it is authorized to sell the property to satisfy the liens if payment was not made on or before that date. To fully comply with petitioners request would mean that the Court would be required to maintain the status quo pending the litigation on the issues presented in this case.

Congress, by D. C. Code 1973, §47-2410, has specifically prohibited any suit to enjoin either the assessment or collection of any tax. The only exception is in the case where a taxpayer, who is otherwise entitled to relief but for Section 47-2410, can demonstrate at the time of the hearing that under no circumstances can the Government prevail. Enochs v. Williams Packing Co., 370 U.S. 1 (1962); Miller v. Standard Nut Margarine Co., 284 U.S. 498 (1932). See also Alexander v. American

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3/ Counsel for the District of Columbia advised the Court on November 24, 1978, that the District incorrectly gave the assessment date as November 15, 1976 with a due date of November 15, 1978. Counsel advises that the correct assessment date was December 19, 1977 with a due date of December 19, 1979. Although this information affords the petitioners an additional year to pay the tax and then litigate it does not affect the ruling of the Court.

United, Inc., 416 U.S. 752 (1974); Bob Jones University v. Simons, 416 U.S. 725 (1974); District of Columbia v. Green, supra; Committee for Fair Taxation of Professionals v. District of Columbia, 104 Wash. L. Rptr. 749 (D.C. Super. Ct. 1976). Here, petitioners have made no showing which would bring them within the above exception, accordingly, any request for injunctive relief must be denied.

IV

Petitioners argue that what they really seek here is a declaratory judgment.

The petitioners have not cited the Court to any statute specifically granting this Court power to grant declaratory relief. It may be argued however that Congress indirectly conferred that power on the court pursuant to D. C. Code 1973, §11-946 which provides that the Superior Court shall follow the Federal Rules of Civil Procedure. Federal Civil Rule 57 provides for declaratory judgment based on the authority granted to the federal courts under 28 U.S.C. 2201. Our rules have incorporated that rule almost verbatim. Super. Ct. Civ. R. 57. Our Court of Appeals has not passed on the precise question concerning this court's jurisdiction to render declaratory judgments, Smith v. Smith, 310 A.2d 229, 231 (D.C. App. 1973); Spock v. District of Columbia, 283 A.2d 14, 20-21 (D.C. App. 1971), however, for the purposes of this motion the Court will assume that it has such power in the appropriate case.

Assuming that the Court's authority to enter declaratory judgment is based upon Rule 57 and thereby 28 U.S.C. 2201, it cannot be overlooked that that statute specifically prohibits the entry of such judgments in matters involving federal taxes. In this sense, the statute is consistent with Section 7421 of the Internal Revenue Code (26 U.S.C. 7421), the latter which, like our Section 47-2410, prohibits the enjoining of tax assessments and collection. The declaratory judgment exception respecting taxes has been found to be coterminus with that provided by Section 7421. "American United", Inc. v. Walters, 155 U.S. App. D.C. 204, 291, 477 F.2d 1169, 1176 (1973), reversed sub nom. Alexander v. "American United", Inc., 416 U.S. 752, 759 n. 10. Accord: Bob Jones University v. Simon, supra at 732, n. 7. The Court concludes that the rationale prohibiting declaratory judgments as to federal taxes has equal applicability in the case of District of Columbia taxes since the basic theory behind both the anti-injunction and anti-declaratory judgment statutes respecting taxes is that taxpayers should pay first and litigate later.

The petitioners here have an adequate remedy at law - they need only pay the tax and then sue for a refund and at that time litigate the merits of the tax. They have made no allegation that they cannot do so and accordingly should be held to that remedy. Finally, it would appear that the petitioners have failed to exhaust their administrative remedies.

Having found that the petitioners are not entitled to declaratory judgment in this case, it is hereby

ORDERED that the Petition is dismissed. 4/

Dated: November 20, 1978

JOHN GARRETT PENN
Judge

George H. Windsor, Esq.
Attorney for Petitioners

Robert J. Marlan, Esq.
Attorney for Respondent

and to Wm. Kenneth Back
Financial Officer, WC.

Copies mailed parties above on
to parties [illegible] 11-21, 1978. No. 11/21/78

4/ Counsel were advised prior to November 15, 1978, that the Petition would be dismissed in order that petitioners could pay the tax and file an appeal on or before that date.